although this case is not cited. In several jurisdictions such a lien is not recognized even in equity, in the absence of a new intervening act appropriating the property to the mortgage.[5] And in New York, such an equitable lien apparently will not be enforced as against creditors, even though without notice.[6]

The author states at page 155, in discussing the requisites of articles of incorporation, as follows: "The name of the corporation, which should include the word 'company,' 'limited,' or 'incorporation.'" In many jurisdictions this is insufficient. Colloquially used, the word "company" may import a corporation, but it does not necessarily involve that meaning in law. We know that such a word is frequently used by individuals and partnerships. Therefore, in many jurisdictions, including New York, a law has been enacted to cover such instances; and the corporation must use some term which will clearly indicate that it is a corporation as distinguished from a natural person or a copartnership.[7]

At pages 158-9, the author in discussing the issuance of stock as full paid says: "When full paid stock is issued for property received, there must be actual fraud in the transaction to enable creditors of the corporation to call the stockholders to account." This is a somewhat too lenient statement of the rule. It is not necessary always to establish an intentional fraud in fact. It is enough to show such reckless conduct in fixing the value of the property conveyed, without regard to its value, that a constructive fraud be inferred.[8] The author's statement is apparently based upon the dictum of Mr. Justice Field in the case of *Coit* v. *Gold Amalgamating Co.*, though that case is not cited. But the dictum must be read in the light of the facts in the case and so limited.

On the whole, the book is a useful and interesting one, and may even prove helpful to young members of the Bar who have failed to acquire experience and facility in the drafting of simple legal documents.

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THE CASE OF REQUISITION. By LESLIE SCOTT and ALFRED HILDESLEY, with an introduction by the Right Honorable SIR JOHN SIMON. Oxford: THE CLARENDON PRESS. 1920. pp. xxiv, 307.

To the American lawyer this little volume is a revelation. In the first place, it makes him realize that there is such a subject as constitutional law in the "right little, tight little isle." In the next place, the thoroughness with which the English lawyers do their work and the value of historical research in the study of any important questions of law are borne in upon him with emphasis, as well as interest. *The Case of Requisition* establishes the principle of constitutional law in England that, even in war times, the government may not take the property of its subjects without making due compensation. We recognized that principle in this country during the war by providing that no property should be taken without compensation. Even in the case of the Hamburg-American docks and the North German Lloyd docks, which we treated as enemy owned, we provided that, upon taking them over, the Government should ascertain their value and deposit, in lieu of the property, with the Alien Property

[5] See *Moody* v. *Wright* (Mass. 1847) 13 Metc. 17; *Federal Trust Co.* v. *Bristol County St. Ry. Co.* (1915) 222 Mass. 35, 109 N. E. 880.

[6] See *Rochester Distilling Co.* v. *Rasey* (1894) 142 N. Y. 570, 37 N. E. 632; *Zartman* v. *First National Bank of Waterloo* (1907) 189 N. Y. 267, 82 N. E. 127; *Titusville Iron Co.* v. *City of New York* (1912) 207 N. Y. 203, 100 N. E. 806.

[7] See *Matter of American Cigar Lighter Co.* (1912) 7 Mi7sc. 643, 138 N. Y. Supp. 455.

[8] *Graves* v. *Brooks* (1898) 117 Mich. 424; 75 N. W. 932.

[9] (1886) 119 U. S. 343, 345, 7 Sup. Ct. 231.

Custodian, an equivalent sum. But the principle is sustained in this English case as a fundamental principle of English constitutional law.

The case arose out of the war. The British War Office, finding it necessary to house the headquarters staff of the Royal Flying Corps, picked upon De Keyser's Hotel, on the Thames Embankment, as suitable for its purpose and took the possession of it from the owners. The hotel being then in charge of a receiver, the Board of Works informed him that they had decided to take possession of the property under the Defence of the Realm regulations (excluding, among other things, the "wine cellars") and enclosed forms of claims for submission to the Defence of the Realm Losses Commission, saying, "Compensation, as you are probably aware, is made *ex gratia* and is strictly limited on the actual monetary loss sustained." The De Keyser receiver declined to accept the *ex gratia,* insisted that the Army Council had no right to take the property in this fashion, protested against the notice contained in the letter and insisted that he was entitled to compensation as a matter of right. Accordingly, he brought a proceeding, in form a "petition of right," one of the rare writs in the English law. Indeed, one of the questions of law involved in the case was whether the remedy by petition of right was still available to a subject of the Crown, and in Chapter VI is to be found a complete review of the history of that remedy and a discussion of its applicability to such a case.

The introduction by Sir John Simon, whose presence in this country as one of the guests at the Cincinnati meeting of the American Bar Association makes the reading all the more attractive at this time, tells us that the real reason for the view taken by the Court of Appeals is to be found in the historical researches which had been made for the purposes of the De Keyser case and in the light which these researches threw upon "an obscure and almost forgotten corner of constitutional law." The lawyers in that case found confronting them the decision in the *Shoreham Aerodrome* case,[1] which apparently was against them. They were helped, indeed, by the analogy in the famous case of *Ship-Money,* where historical research came in to correct the first impressions of the lawyers and wherein Mr. Justice Crooke justified his change of view not alone by drawing a distinction rather tenuous in the case, but by saying:

"And if I had been of that opinion absolutely, now having heard all the arguments on both sides, and the reasons of the King's Counsel to maintain this writ, and why the Defendant is to be charged; and the argument of the Defendant's counsel against the writ, and their reasons why the Defendant should not be charged to pay the money assessed him, and having duly considered the records and precedents showed unto me, especially those of the King's side, I am now of an absolute opinion that this writ is illegal, and declare my opinion to be contrary to that which is subscribed by us all. And if I had been of the same opinion that was subscribed, yet upon better advisement being absolutely settled in my judgment and conscience in a contrary opinion, I think it no shame to declare that I do retract that opinion, for *humanum est errare,* rather than to argue against my own conscience. And therefore none having, as I conceive, removed those difficulties, I shall proceed to my argument, and show the reasons of my opinion, and leave the same to my lords and brothers."[2]

But, as Sir John Simon observes, the judgment in *The Case of Requisition* teaches the same lesson, "the lesson that the foundations of constitutional law lie deeply embedded in ground which is in the joint occupation of historians and lawyers." And may we add the observation that the celerity with which business is disposed of in our courts, both by Bench and Bar, has made scholarly historical research so exceptional a performance that it is marked by its conspicuity when it takes place? For want of just such historical research, the doctrine of revoca-

[1] *In re a Petition of Right* [1915] 3 K. B. 649.
[2] (1637) 3 Howell's *State Trials* 825, 1146.

tion of arbitration agreements impeded the progress of commercial law for over three centuries.

In the *De Keyser* case, an adjournment was taken after the argument on appeal, by direction of the Master of the Rolls, in order that a more complete search might be undertaken by the Crown, with the result that parliamentary acts and procedure were combed for precedents; and it is this research that engages the attention of the reader for most of the pages. The right of the Crown to take the property of a subject without his consent is justified here, as it was in the cases involving the emergency housing laws,[3] on the ground of necessity—*salus reipublicae suprema lex*. But the immediate question in the *De Keyser* case was "whether the subject is entitled to compensation for interference with his proprietary rights, the necessity for that interference being assumed, rather than whether the right to requisition itself rests upon any legal foundation." The historical inquiry developed that it was the uniform practice on the part of the Crown, down to 1914, *to compensate the subject where his property is taken for the public service, be it land, chattels or ships*. When this subject was under consideration in our own country during the war, the prevailing argument was that no citizen, because he chanced to have property which the Government needed, should be subjected, in consequence, to a greater burden than he should bear as a taxpayer and that the loss which he suffered by reason of the requisition of his property should be distributed among all taxpayers rather than fall upon him alone. In many instances in our country during the war it would have been complete ruin if this principle of compensation had not been accepted, for we took over entire terminal properties on requisition, like the Bush docks, where, in order to save the stockholders from unwarranted loss, the President of the United States directed an advance of a million dollars on account to be paid to the company, pending the determination of the compensation ultimately to be paid. It is interesting, therefore, to find that the result of the historical research of the Crown in the *De Keyser* case is that

"'it does not appear that the Crown has even taken for these purposes the land of the subject without paying for it, and that there is no trace of the Crown having, even in the times of the Stuarts, exercised or asserted the power or right to do so by virtue of the Royal Prerogative.'"

And it is comforting, also, to find that the English judges and lawyers found that *Dora* was not helped by any contrary treatment.

"It cannot contribute to the public safety for a subject to be deprived of compensation to which he is otherwise entitled. The Defence of the Realm is not promoted by denying compensation where it is due; the relief to the Treasury and the general body of tax-payers which results if one subject is to bear his own loss instead of the loss being ratably borne by the whole community is not what is meant by the Defence of the Realm."

And so it was concluded that the matter was not merely *ex gratia* and that the property owner was not dependent upon the bounty of the Crown but was entitled to compensation as a matter of right.

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JURISPRUDENCE. Sixth Edition. By SIR JOHN SALMOND. London: SWEET & MAXWELL. 1920. pp. xv, 512.

The usefulness of the volume on *Jurisprudence* by Sir John Salmond, Solicitor

[3] *Block* v. *Hirsh* (1921) 41 Sup. Ct. 458; *Marcus Brown Holding Co.* v. *Feldman* (1921) 41 Sup. Ct. 465.